Tentative Rulings for June 6, 2012
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

09CECG00845	***Conroy v. Gong*** **(Dept. 403)**
09CECG04684	***Fresno Palm Lakes v. JB Development et al*** **(Dept. 403)**
10CECG02314	***CitiMortgage v. Markaryan*** **(Dept. 403)**
11CECG02432	***Sarantos v. Club One Acquisition Corp.*** **(Dept. 403)**
12CECG00765	***Union Bank v. Shore Financial Group*** **(Dept. 402)**

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

12CECG00719	***Reimche v. Church, et al.,*** **is continued to June 20, 2012, at 3:30 p.m. in Dept. 501.**

(Tentative Rulings begin at the next page)

(6)

Tentative Ruling

Re: ***Porras v. Valley Truck Parts & Equipment***
Superior Court Case No.: 09CECG00371

Hearing Date: June 6, 2012 (**Dept. 403**)

Motion: By Defendant/Cross Complainant, Valley Truck Wrecking, Inc. dba Valley Truck Parts & Equipment to enforce settlement

Tentative Ruling:

To deny.

Explanation:

The transcript from the settlement conference hearing that took place on September 22, 2011, makes it clear that there is no settlement enforceable under Code of Civil Procedure section 664.6. Rather, what was contemplated was a stipulation that was never prepared and executed. In order for an oral settlement "before the court" to be enforceable under section 664.6, the parties themselves, and not their attorneys, must consent to settle the case on the record. (*Levy v. Superior Court* (1995) 10 Cal.4th 578, 585; *Fiege v. Cooke* (2004) 125 Cal.App.4th 1350, 1353-1355.)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling Issued By: **MWS** (Judge's initials) **on** **6/1/12** (Date).

(5)

Tentative Ruling

Re: ***Reeves, et al. v. Schiefer, et al.***
Superior Court Case No. 10 CECG 03842

Hearing date: June 6, 2012 (Dept. 503)

Petitions: Approve Compromise of Disputed Minor's Claim

Tentative Ruling:

To grant the Petitions to compromise the claims of the minors. The orders have been signed and the Hearing is off calendar.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling Issued By: **A.M. Simpson** (Judge's initials) **on** **6-4-12** (Date).

(6)

Tentative Ruling

Re: ***Mt. Whitney Farms, LLC v. Sandstone Marketing, Inc.***
Superior Court Case No.: 08CECG03286

Hearing Date: June 6, 2012 (**Dept. 501**)

Motion: By Sandstone Marketing, Inc., to add alter egos of judgment debtors

Tentative Ruling:

To deny.

Explanation:

First, this motion was not served on most of the entities sought to be added to the judgment, including Joan S. Felger, individually and as trustee of the two trusts, Forrest Felger, Madera Ranch Cotenancy, Cantua Creek Farms, Carol Felger Proano, Faith Felger Halstrom, Phyllis Felder, and Desiree Felger.

Second, this judgment to which the alleged alter egos are sought to be added is currently on appeal, and this motion does not appear to be a matter not embraced in or affected by the appeal. (Code Civ. Proc., § 916, subd. (a).) This is not an ancillary or collateral matter such as a motion to tax costs or a motion for attorney's fees.

"In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.)

At best, Sandstone Marketing, Inc., ("Sandstone") has only met its burden as to Warren Felger and Forrest Felger, who were actually members of Mt. Whitney Farms, LLC, and the Felger Farms general partnership. (*NEC Electronics, Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 791.)

Nor has Sandstone submitted any evidence of fraud, injustice, or an inequitable result that would follow should the separateness of the Felger family from its entities be respected and without such evidence, the alter ego theory cannot be invoked. (*Sonora Diamond Corp. v. Superior Court, supra,* 83 Cal.App.4th 523, 539.)

"Bad faith" in the alter ego context is described as the misuse of the corporate form to "perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose." (*Sonora Diamond Corp. v. Superior Court, supra,* 83

Cal.App.4th 523, 538.) "The alter ego doctrine does not guard every unsatisfied creditor of a corporation but instead affords protection where some conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate form. Difficulty in enforcing a judgment or collecting a debt does not satisfy this standard." (Id. at p. 539.)

To establish an injustice or an inequitable result, Sandstone must prove some "specific manipulative conduct" by the Felger family towards Mt. Whitney/Felger Farms, which relegates the latter to the status of a mere conduit or instrumentality. (Laird v. Capital Cities/ABC, Inc. (1998) 68 Cal.App.4th 727, 742.) Sandstone has not met this burden, and the motion must be denied.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: M.B. Smith on 6/5/12.
(Judge's initials) (Date)

(25) **Tentative Ruling**

Re: ***Ted Switzer v. Flournoy Management, LLC, a Delaware Limited Liability Company; Robert "Sonny" Wood, in his capacity as managing member of Flournoy Management LLC; and Does 1 -50***

Case No. 11 CECG 04395

Hearing Date: June 6, 2012 (Dept. 402)

Motion: Plaintiff's Demurrer to Defendant Flournoy Inc.'s Answer to the Complaint

Tentative Ruling:

To SUSTAIN, with leave to amend, demurrer to the 1st through 5th , and the 7th through 25th affirmative defenses. (Code Civ. Proc. § 430.20, subd. (a).)

To OVERRULE the demurrer as to the 26th affirmative defense, but to strike this matter *sua sponte*, pursuant to Code Civ. Proc. §436.

Defendants are granted **10 days'** leave to file the First Amended Answer. The time in which the answer may be amended will run from service by the clerk of the minute order. All new allegations in the First Amended Answer are to be set in **boldface** type.

Explanation:

Regarding Flournoy's 1st – 5th and 7th-25th affirmative defenses, the court finds that these affirmative defenses fail to state facts sufficient to constitute any defense. Code Civ. Proc. §430.20(a). Defendant has failed to plead any of the affirmative defenses with the requisite specificity and has only pled the affirmative defenses in a conclusory manner. The general rule is that the same pleading of "ultimate facts" rather than evidentiary matter or legal conclusions is required in pleading an answer as in pleading the complaint. The answer must aver facts "as carefully and in as much detail as the facts which constitute the cause of action and which are alleged in the complaint." See *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384.

Regarding the 10th affirmative defense (statute of limitations), "it is *not* necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of Section ____ (giving the number of the section and subdivision thereof, if it is so divided, relied upon) of the Code of Civil Procedure." [Code Civ. Proc. § 458 (emphasis added)] This rule is strictly construed, and a pleading that fails to specify both the applicable statute and subdivision "raise(s) no issue and present(s) no defense." [*Davenport v. Stratton* (1944) 24 Cal.2d 232, 246–247—plea that action barred by Code Civ. Proc. § 339 not sufficient because that statute contains

several subdivisions; *Brown v. World Church* (1969) 272 Cal.App.2d 684, 691] Here, the answer does not refer to any statute or subdivision. Therefore, the demurrer to this affirmative defense is sustained with leave to amend.

The court grants **10 days** leave to amend. It is generally considered an abuse of discretion to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action or the defendant can state a good defense. Rylaarsdam & Edmon, *California Practice Guide: Civil Procedure Before Trial* (2011) at 7:129.

Finally, the 26th affirmative defense is Flournoy's reservation of rights to amend its answer to allege additional affirmative defenses. However, since this "affirmative defense" is actually not a defense, it is not appropriately challenged by demurrer. Instead, it could be challenged by a motion to strike, as improper or irrelevant matter. In the interest of judicial economy, therefore, this 'affirmative defense" is stricken, *sua sponte*, pursuant to Code Civ. Proc. § 436, as "improper matter" (not improper in substance, but in functioning as an affirmative defense when it is not).

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH on 6/5/2012 .

(Judge's Initials) (Date)

(19) **Tentative Ruling**

Re: ***Bryant v. RBS Lynk***
Superior Court Case No. 11CECG03767

Hearing Date: June 6, 2012 (Department 502)

Motion: by defendants for dismissal or stay.

Tentative Ruling:

To grant the motion to dismiss.

Explanation:

The motion is based on a ruling in a 2008 case between plaintiff and one of the defendants. WorldPay is the current name for the entity sued in this case and the previous case as RBS Lynk. The complaint in this case and the previous case are virtually identical and allege the same breach of contract claim. Although a new defendant has been added in this case there are no charging allegations against him.

The previous case was dismissed on forum non-conveniens grounds based on a forum selection clause in the contract sued upon. That ruling has preclusive effect here and requires that the motion be granted. (*Sabek, Inc. v. Englehard Corp*. (1998) 65 Cal. App. 4th 992, 998; *MIB, Inc. v. Superior Court* (1980) 106 Cal. App. 3d 228, 230.)

Pursuant to Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling Issued By: **DSB** (Judge's initials) **on** **6-5-12** (Date).

[25] **Tentative Ruling**

Re: ***Laney, et al. v. Felts, et al.***
Superior Court Case No. 12CECG01100

Hearing date: June 6, 2012 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant. Hearing off calendar.

Pursuant to California Rules of Court, rule 391, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: M.B. Smith (Judge's initials) on 6/5/12 (Date).

Tentative Ruling

Re: ***Standard v. Miller, et al***
Superior Court Case No. 12CECG00935

Hearing Date: June 6, 2012 (**Dept. 402**)

Motion: By defendants to compel arbitration

Tentative Ruling:

To deny.

Explanation:

The moving papers acknowledge there is a split of authority as to whether an arbitration clause in a contract that includes a specific place to initial agreement is binding if a party to the agreement has not initialed his or her consent, but they argue that because Knight, Chernick, Halderman & Bettinelli, state in ***California Practice Guide: Alternative Dispute Resolution*** at 5:105.2 that the arbitration provision is enforceable against any party who assents to it, even in the absence of assent by other parties, that is the most persuasive statement of California law, citing ***Grubb & Ellis Co. v. Bello*** (1993)19 Cal.App.4th 231, 239.

However at 5:104, the same authors cite ***Marcus & Millichap Real Estate Invest. Brokerage Co. v. Hock Invest. Co.*** (1998) 68 Cal.App.4th 83, 92 as holding that because only one party initialed the arbitration provision in a real estate contract, no enforceable agreement to arbitrate was formed.

Grubb & Ellis was criticized in ***Marcus & Millichap, supra,*** where the court found that because the buyers initialed the arbitration clause as part of their offer to purchase property, the sellers never initialed it or otherwise indicated that they accepted that the arbitration provision in their subsequent counter offers. The court applied general California contract law to that fact pattern and concluded that although the buyers offered to include the arbitration provision as part of the purchase agreement, the sellers did not accept that offer, making the provision unenforceable by the broker that had acted as agent in the transaction. ***Marcus & Millichap Real Estate Inv. Brokerage Co. v. Hock Inv. Co., supra,*** 68 Cal. App. 4th at 89.

> It then addressed the contrary holding in ***Grubb & Ellis, supra,*** as follows:
> [O]ne California case has indicated that a party initialing the arbitration provision in a real estate listing contract may be bound by that provision, even though the other party has not assented to that provision and is therefore not bound by it. ***Grubb & Ellis Co. v. Bello*** (1993) 19 Cal. App. 4th 231, 238-241 (***Bello***).) ***Bello*** involved real estate listing agreements providing for arbitration of any dispute between the parties. When the broker demanded arbitration of a fee dispute, the seller objected on the ground the broker had not initialed the arbitration

provision, as required by CCP §1298(c), although the seller had done so. The seller argued the court should "read into the statute the requirement of mutuality of remedy, namely arbitration, in order for such an arbitration provision to be valid." 19 Cal. App. 4th at pp. 238-239.

The ***Bello*** court confined its analysis to the language of section 1298(c), *and did not consider general contract principles in determining whether the parties had agreed to arbitrate disputes between them*. The ***Bello*** court concluded ". . . there is no reason to find the statute [section 1298(c)] requires mutuality of arbitration by necessary implication." (19 Cal. App. 4th at p. 239, italics added.) Thus, the court concluded that "[a]lthough [the broker's] failure to assent in writing might have had some effect on whether it could have been required to arbitrate, the statute does not purport to vitiate [the seller's] assent in such a situation. Nothing in established contract law proscribes a contract provision from subjecting only one party to arbitration." (***Id***. at p. 239.)

The Court of Appeal, First Appellate District, Division Two, criticized Bello on this point in ***Stirlen v. Supercuts, Inc.*** (1997) 51 Cal. App. 4th 1519. The Stirlen court stated: "To the extent [***Bello***] suggests mutuality of arbitral obligation is not required, we question the court's analysis of this issue, which has never been relied upon by other courts and is hard to reconcile with other pertinent cases requiring mutuality of the arbitral obligation. (additional citations omitted.) ***Stirlen v. Supercuts, Inc., supra***, 51 Cal. App. 4th at pp. 1538-1539, fn. omitted.

We agree with the criticism of ***Bello***, but conclude that, in order to decide this case, we need not determine whether mutuality of arbitration is always required. This is because, even if mutuality of the arbitral obligation is not generally required, it is clear the terms of the purchase agreement in this case contemplate that both buyer and seller must be bound before either is bound to arbitrate. Again, the actual arbitration clause to which buyers assented states: "If a controversy arises with respect to the subject matter of this Purchase Agreement or the transaction contemplated herein . . . Buyer, Seller and Agent agree that such controversy shall be settled by final, binding arbitration." This clause clearly contemplates that all parties must agree to the clause in order for it to be effective.

Thus, even if we accept the ***Bello*** court's holding that section 1298(c) does not impose a requirement of "mutuality of remedy," it does not follow that the notice provision required by that statute negates a requirement of mutuality that the contract itself imposes.

[Fn. 7: In this regard, we note the ***Bello*** court never quoted or discussed the full arbitration provision in the contracts before it. Instead, the Bello court confined its analysis to whether section 1298(c) imposed a mutuality requirement.]

In sum, we conclude that, read as a whole, the purchase agreement in this case contemplated that the arbitration of disputes provision would be effective only if

both buyers and sellers assented to that provision. Since the sellers did not assent to this provision the parties did not agree to binding arbitration.

Marcus & Millichap Real Estate Inv. Brokerage Co. v. Hock Inv. Co., supra, 68 Cal. App. 4th at 89-91.

Here too, both of the subject arbitration clauses provide that "buyer and seller agree that any dispute or claim in law or equity arising between them out of this agreement or any resulting transaction which is not settled through mediation, shall be decided by neutral, binding arbitration…" And following the arbitration clause in both agreements at issue here is the notice required by CCP § 1298, which states that *by" initialing in the space below"* the parties are agreeing to arbitrate [even though CCP §1298 doesn't apply to an agreement for purchase of a business].

Thus here, as in ***Marcus & Millichap***, it appears the contracts contemplate both sides initialing their agreement to arbitrate in order to make the arbitration provision binding. And since neither Linda Miller nor Les Chappel (who was not a party to either agreement but who plaintiffs have nevertheless accused of violating the non-competition clause) initialed the arbitration provisions in either agreement, there was, under ***Marcus & Millichamp***, never a binding agreement to arbitrate.

So while it may be true that CCP §1298 doesn't require that an arbitration agreement be mutual, it does appear that the ***Grubb & Ellis*** decision never addressed the question of whether both parties need to have signed the arbitration provision to make the agreement to arbitrate enforceable, while that was precisely the issue in ***Marcus & Millichamp***.

The court finds that ***Marcus & Millichap Real Estate Inv. Brokerage Co. v. Hock Inv. Co., supra,*** 68 Cal. App. 4th at 89-91 is the better reasoned analysis. The motion to compel arbitration will therefore be denied.

Pursuant to California Rules of Court, Rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH on 6/4/2012 .

(Judge's Initials) (Date)

Tentative Ruling

Re: ***Llecholoch v. Fidelity National Ins. Co., et al***
Superior Court Case No. 10CECG04453

Hearing Date: June 6, 2012 (**Dept. 503**)

Motion: By plaintiffs for protective order and by defendant to compel third party witnesses to submit to deposition

Tentative Ruling:

To issue an order consistent with the proposal outlined in Mr. Cummings May 22nd letter, with the clarification that expert witness fees must, per CCP §2034.430(a)(3), be paid as an expert witness to the extent these witnesses are "asked to express an opinion within the person's expertise and relevant to the action or proceeding."

Explanation:

The parties appear to be close to a resolution of their dispute, other than defining what subjects would fall within the scope of expert witness testimony and what would constitute testimony of a percipient witness. Mssrs. Rogers and Eaton appear to have both relevant personal knowledge of the events concerning plaintiffs' home, as well as expert opinion on the appropriate scope and reasonable cost of necessary repairs.

CCP §2034.430(a) provides in relevant part that the expert witness fee must be paid to:

> (3) An architect, professional engineer, or licensed land surveyor who was involved with the original project design or survey for which that person is asked to express an opinion within the person's expertise and relevant to the action or proceeding.

Thus it appears that even without being designated as an expert, defendant would need to pay an expert witness fee to Mr. Rogers if he is to be asked for his opinion on what repairs were needed on the home.

The court will therefore order plaintiffs' counsel to produce the two witnesses (Rogers and Eaton) in accordance with the terms set forth in Mr. Cummings' May 22nd letter, and on the conditions set forth therein. If the parties cannot agree on mutually agreeable dates, the depositions must occur no later than June 29th, with the declarations required by CCP §2034.260 to precede the scheduled depositions by at least five calendar days, and with the documents being produced in accordance with item 8 of the May 22nd letter.

Pursuant to California Rules of Court, Rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute

order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling Issued By: **A.M. Simpson** (Judge's initials) **on** **6-5-12** (Date).

Tentative Ruling

Re: ***Wells Fargo Bank NA v. 6354 Figarden General Partnership***
Superior Court Case No. 11CECG01157

Hearing Date: June 6, 2012 (**Dept. 502**)

Motion: By plaintiff for order approving receiver's final accounting, discharging receiver, exonerating bond and terminating receivership

Tentative Ruling:

To grant.

Explanation:

The opposition to this motion "urges" that any order entered pursuant to this motion "must be in accord with the limits on recovery mandated by CCP §726, and may not expand or add to the debt except as expressly permitted by §726."

However the opposition doesn't explain why defendants believe that granting the relief requested by this motion would violate §726. Nor does it identify any specific objection to the Receiver's Report or any items or expenses included therein.

To the extent defendants are suggesting that the $30,000 Receiver's Certificate wasn't included as part of the debt in the judicial foreclosure decree, that $30,000 was specifically addressed in the same stipulated motion for a foreclosure decree, and the November, 2011 order specified that it was to be repaid from proceeds of the foreclosure sale.

Since defendants have not identified any expenses they claim were not legitimately incurred, there appears to be no reason the final report should not be accepted or the receiver discharged and paid. The motion will therefore be granted and the proposed order signed.

Pursuant to California Rules of Court, Rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling Issued By: **DSB** (Judge's initials) **on** **6-5-12** (Date).

Tentative Ruling

(17)

Re: ***Macias v. TAG Automotive Group, Inc. et al.; and cross actions***
Superior Court Case No. 07 CECG 02392

Hearing Date: June 6, 2012 (Dept. 503)

Motion: Motion for Protective Order

Tentative Ruling:

To grant motion and award $11,044.88 in attorney's fees and miscellaneous costs and expenses.

Explanation:

"Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties . . .." (Code Civ. Proc., § 1021.) Here, bond application provides:

> At all times indemnify, and keep indemnified the Surety, and hold and save it harmless from and against and all damages, loss, costs, charges and expenses of whatsoever kind or nation, including counsel and attorney's fees, incurred under retainer or salary or otherwise, which it shall or may, at any time, sustain or incur by reason of in conjunction with furnishing any bond or undertaking..

Code of Civil Procedure section 1033.5 provides, in subdivision (a)(10), that attorney fees are "allowable as costs under Section 1032" when they are "authorized by" either "Contract," "Statute," or "Law."

Civil Code section 1717 provides, in relevant part:

> In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

(Civ. Code § 1717, subd. (a).)

"[T]he party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section." (Civ. Code, § 1717, subd. (b).) If a party has an unqualified win, the trial court has no discretion to deny

the party attorney fees as a prevailing party under Civil Code section 1717. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 876.)

International clearly prevailed on the contract for indemnity, because it was granted summary judgment on February 9, 2012 and judgment in conformity therewith was entered on February 23, 2012.

Amount of Fees:

A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) Here, plaintiff seeks a loadstar of "up to" $13,134.88. As set forth in more detail below this loadstar is high and will be reduced.

As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable hourly rate*. . . ." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method '"is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.' " (*Serrano III*, *supra*, 20 Cal.3d at p. 48, fn. 23.)

1. Number of Hours Reasonably Expended

In referring to "reasonable" compensation, the California Supreme Court indicated that trial courts must carefully review attorney documentation of hours expended; "padding" in the form of inefficient or duplicative efforts is not subject to compensation. (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1132.) The constitutional requirement of just compensation, "cannot be interpreted as giving the [prevailing party] carte blanche authority to 'run up the bill.' " (*Aetna Life & Casualty Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 865, 880.) The person seeking an award of attorney's fees "is not necessarily entitled to compensation for the value of attorney services according to [his] own notion or to the full extent claimed by [him]. [Citations.]" (*Salton Bay Marina, Inc. v. Imperial Irrigation Dist*. (1985) 172 Cal.App.3d 914, 950.) The prevailing party must make a "good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 434.)

Clerical Tasks

Generally in awarding attorney's fees, "purely clerical or secretarial tasks should not be billed …, regardless of who performs them." (*Missouri v. Jenkins* (1989) 491 U.S. 274, 288.) However, this indemnity clause includes not only attorney's fees but "damages, loss, costs, charges and expenses of whatsoever kind or nature, including counsel and attorney's fees." Thus, clerical and paralegal tasks will be compensated. However, it is not appropriate to compensate these tasks, which require no legal

analysis or skill at an attorney's billing rate. While recognizing that the billing rate used, $150 per hour, is a "blended rate," the court will allow the clerical time at a rate of $50.00 per hour which in the court's experience is a fair blended rate for secretarial and paralegal time.

Accordingly the tasks of checking the court's website for hearing dates, calendaring dates, preparing form pleadings such as Doe Amendments and Notice and Acknowledgement of Receipts and substitutions of attorneys, calls to the clerk of the court regarding scheduling or telephonic appearances. calls to CourtCall to set up telephonic appearances, continuing CourtCall appearances or hearings will be compensated at a rate of $50 per hour and not $150 per hour for a total reduction of $590.

2. Reasonable Hourly Compensation

Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type" (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133.) Ordinarily, "'the value of an attorney's time . . . is reflected in his normal billing rate.'" (*Mandel v. Lackner* (1979) 92 Cal.App.3d 747, 761.)

All the attorneys, junior associates, senior associates and partners, billed at the same rate, $150 per hour. This blended rate is a reasonable rate.

3. Total fees

The fees in the timesheets total $13,199.88. The court is disallowing $590 of those fees. According to the declaration of John M. Pagan an additional four hours at a rate of $150 were spent on this motion for attorney's fees, adding $600. The court previously allowed the sum of $2,165 in attorney's fees on the interpleader motion which must be subtracted from the fee award. No appearance is anticipated on this uncontested motion. Accordingly the fees and miscellaneous costs and expenses awarded total $11,044.88. ($13,199.88 - $590 + $600 - $2,165 = $11,044.88.)

Pursuant to California Rules of Court, rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling Issued By: **A.M. Simpson** (Judge's initials) **on** **6-5-12** (Date).